

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)	
MEASURABLE COST SAVINGS)	
DETERMINED BY DIRIGO)	ORDER REGARDING
HEALTH FOR THE SECOND)	THE RECORD
ASSESSMENT YEAR)	
)	
Docket No. INS-06-900)	

The Superintendent of Insurance issues this order to clarify what is and shall be the record upon which the Superintendent will conduct his review of the Dirigo filing made on June 9, 2006 in this proceeding. Although the Superintendent has previously denied separate motions by the Dirigo Board and Consumers for Affordable Health Care (“CAHC”) to admit additional evidence in this proceeding, the evidence that has been excluded by the Superintendent became available only after the Board’s May 2006 hearings and its June 2006 written decision and such evidence was unavailable to any party during the Dirigo proceeding, whereas the electronic spreadsheet file(s) identified in this order below were used and relied on by the Dirigo agency staff and witnesses, in framing their arguments to the Dirigo Board. Furthermore, paper versions of this electronic evidence were in the record of the proceeding before the Dirigo Board.

Electronic Spreadsheet File(s)

The record of the Dirigo proceeding which was transmitted to the Superintendent contains hard-copy reproductions (paper versions) of certain spreadsheets relied on by Mercer and testified about by various witnesses at the Dirigo hearings. The Superintendent concludes that this documentary version of electronic spreadsheet(s) is not an adequate representation of the data on the record that is relevant to his review of the Dirigo filing. The paper form of this evidence is a static representation of operational formulae and inhibits review of testimony made on the record before the Dirigo Board in reference to data, assumptions, and the operation of the relevant formulae. The inquiry in this case revolves around complex mathematical calculations and assumptions. The electronic operational form of these spreadsheets was information relied upon and argued about by the parties at hearing before the Dirigo Board. While no party availed itself of the opportunity to request that the Board supplement the record with the electronic version of the spreadsheet data, the Superintendent does so now. The Superintendent deems the entry into evidence before the Dirigo Board of the hard-copy reproductions of the electronic spreadsheets to be the equivalent to having entered into the record the electronic operational version of that data with embedded formulae and data. *See* 5 M.R.S.A. § 9059. This data was before the Dirigo Board through hearing testimony, is relevant to the Superintendent’s inquiry, and is “the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.” 5 M.R.S.A. § 9057(2). The analogous electronic spreadsheet data and formulae were entered into the record in last year’s review proceeding before the Superintendent and were used to evaluate the various arguments about the validity and reasonableness of those mathematical calculations. The electronic version of the calculations made by Dirigo’s witnesses is similarly relevant this year.

In addition to being (a) admissible in this proceeding on order of the Superintendent as relevant, (b) available in the proceeding before the Dirigo Board, and (c) relied upon in the proceeding before the Dirigo Board; the Superintendent hereby further advises the parties that he will take official notice of the facts contained in the electronic and operational version(s) of the spreadsheet data from which documentary and testimonial evidence was generated, pursuant to 5 M.R.S.A. § 9058. The Superintendent concludes that no prejudice will result to any party from his review of this evidence as the parties in this case have had access to it in the proceeding before the Dirigo Board. Any party that contests the substance or materiality of the facts hereby noticed shall file a written opposition with the Superintendent by 3:00 p.m. on July 11, 2006.

For all of the foregoing reasons, the Superintendent ORDERS the Dirigo Board to produce the electronic file(s) of the following spreadsheet(s) and provide them to the Superintendent in the electronic form they were in at the time the witness formed his or her opinion: Dirigo Administrative Record Binder 3, page 1094 (*see also* page 1453), pages 1106 through 1159, page 1160, and page 1161. These electronic files shall contain all the embedded data, formulas, assumptions, and underlying electronic workpapers upon which the witness(es) based the conclusions about which s/he testified. Production to the Superintendent of the electronic spreadsheet file(s) by the Dirigo Board shall be made immediately in a manner consistent with the requirements for service of filings, but in no event shall the e-mail service copy be made later than 12:00 noon on July 8, 2006.

Consumers for Affordable Health Care's (CAHC) Brief Exhibits 3 and 4

CAHC has by brief advanced arguments regarding evidence which only became available after the Dirigo Board's determination of aggregate measurable cost savings was made. Documents containing additional evidence were appended to CAHC's brief as Exhibits 3 and 4. As the Superintendent has already ruled this evidence to be irrelevant to this proceeding and not admissible, neither this evidence nor oral argument relying on or referencing these exhibits will be allowed or considered by the Superintendent at the hearing or otherwise in his review of the Dirigo filing.

PER ORDER OF THE SUPERINTENDENT



DATED: July 7, 2006

ALESSANDRO A. IUPPA
Superintendent of Insurance